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Supplemental Educational Services for Children from Low-Income Families Under ESEA Title I-A

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Summary

Supplemental educational services are educational activities provided outside of normal school hours that are designed to augment or enhance the educational services that are provided during regular periods of instruction. Examples include tutoring in specific subject areas and preparation for academic achievement tests. The No Child Left Behind Act (P.L. 107-110) amended the Elementary and Secondary Education Act (ESEA) to authorize supplemental educational services as a means of school improvement. Local educational agencies (LEAs) are required to provide students from low-income families, who attend Title I-A schools that have been identified for a second year of school improvement, corrective action, or restructuring, the opportunity to receive supplemental educational services from a state-approved provider.

Public and private non-profit or for-profit providers may become eligible to deliver supplemental educational services upon being approved by state educational agencies (SEAs). Parents of eligible students may select from approved providers offering services in the jurisdiction of the LEA where their children attend school, or that of a neighboring LEA. In instances where only a limited number of eligible children can be provided with supplemental educational services — for example, because of funding constraints or the limited availability of approved providers — priority must be given to the lowest achieving eligible children. Providers are required to demonstrate that the services they provide contribute to the increased academic proficiency of the eligible children they serve, as measured according to state standards, in order to retain their status as approved providers.

If there is sufficient demand for supplemental educational services, LEAs must dedicate an amount equal to between 5% and 20% of their Title I-A allocations to fund them. Costs per pupil are limited to the lesser of an LEA's Title I-A allocation per poor student, or the actual cost of services. Nationwide, there is considerable variation across LEAs in the maximum amount of funding available per pupil.

As more schools are identified for a second year of school improvement, corrective action, or restructuring, LEAs are being required to offer increasing numbers of students from low-income families the opportunity to receive supplemental services. Much greater proportions of eligible students are choosing to receive supplemental educational services than to change schools under the ESEA Title I-A public school choice provisions. Still, there have been challenges to implementation, such as the availability of services in rural areas, timely notification of parents regarding their children's eligibility for services, negotiation of contracts with providers for service delivery, and measurement of the effectiveness of supplemental educational services in improving student academic achievement.

This report will be updated periodically.

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Supplemental Educational Services for Children from Low-Income Families Under ESEA Title I-A

Background

Supplemental educational services in the general sense are educational activities provided outside of normal school hours that are designed to augment or enhance the educational services provided during regular periods of instruction. Examples include tutoring in specific subject areas and preparation for academic achievement tests. Supplemental educational services are provided by a variety of public and private non-profit and for-profit entities. In many instances, parents pay for their children to receive these services; however, increasingly, privately-financed scholarship programs and the government are subsidizing the provision of supplemental educational services to children from low-income families. This report focuses on supplemental educational services provided under Title I-A of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLBA, P.L. 107-110). Under Title I-A, LEAs are required to offer supplemental educational services to children from low-income families who attend schools that have been identified for a second year of school improvement, corrective action, or restructuring.¹

In the past, federally funded programs that provide educational services to disadvantaged students outside of the regular school day have been successful in reaching a portion of children attending Title I schools. Based on information from the National Longitudinal Survey of Schools (NLSS), the U.S. Department of Education (ED) reports that during the 1999-2000 school year (prior to enactment of the NCLBA), 69% of Title I schools operated before or after school programs and in 30% of Title I schools, these extended day programs were funded by Title I. In the highest poverty elementary schools (those with poverty rates between 75% and 100%), before and after school programs provided students with an average of 227 additional hours of instruction per year. Students in the highest poverty secondary schools were provided an average of 279 additional hours of instruction per year through extended day programs. However, the NLSS reveals that only a limited proportion of students attending Title I schools received additional instruction — 26% in the highest poverty schools, and 20% overall.²

¹ ESEA § 1116(e).

² U.S. Department of Education, Office of the Under Secretary, Planning and Evaluation Service, *Provision of Title I Services: Recent Evidence from the National Longitudinal Survey of Schools*, Aug. 2002, [http://www.ed.gov/offices/OUS/PES/title1_service03.pdf], (continued...)

The first significant opportunity under a federally funded program for parents to select between public and *private* providers of tutorial or supplementary educational services came under the Reading Excellence Act through programs funded by tutorial assistance subgrants.³ In administering tutorial assistance subgrants, LEAs were required, among other things, to provide parents the opportunity to select a tutorial provider for their child from among a variety of choices that included both a school-based program and programs delivered by private providers operating under contract with the LEA. While previously in other federal education programs, private non-profit and for-profit providers delivered services under contract, tutorial assistance subgrants marked the first direct opportunity for parents to select a private entity to provide educational services to their children. Some perceived this as a first step toward publicly funded school vouchers.

The Reading Excellence Act required SEAs receiving reading and literacy grants to award at least one tutorial assistance subgrant to LEAs that met certain eligibility criteria. Those criteria were that the LEA had at least one school located in an empowerment zone or enterprise community (EZ/EC); at least one school identified for school improvement; the highest or second-highest number of Title I-A eligible pupils in the state; or the highest or second-highest school age poverty rate in the state. Little information is available as of yet about the effectiveness of the tutorial assistance subgrants; however, national and state evaluations of the program were required under the authorizing legislation.

During the 107th Congress's deliberations over reauthorization of the ESEA, the House and Senate considered numerous proposals to expand federal support of parental choice and access to privately provided educational services. Proposals were made to do so through school vouchers and tax subsidies. While legislation was enacted into law allowing tax-free distributions from Coverdell Education Savings Accounts to be used for elementary and secondary education expenses, including tuition and fees for private school attendance, neither chamber passed a school voucher provision. However, with enactment of the NCLBA, children from low-income families who attend Title I-A schools that do not improve after being identified for school improvement are now afforded the opportunity to receive supplemental educational services from state-approved public or private providers.

² (...continued)
visited Jan. 25, 2006.

³ The Reading Excellence Act was incorporated into the ESEA in 1998 under P.L. 105-277. Funds for reading and literacy grants, and tutorial assistance subgrants, were authorized from FY1999 through FY2001. Tutorial assistance subgrants no longer are authorized under the ESEA as amended by P.L. 107-110. For further information on the Reading Excellence Act, see CRS Report RL30663, *The Reading Excellence Act: Implementation Status and Issues*, by Gail McCallion.

Supplemental Educational Services Under ESEA Title I-A

Supplemental educational services, as provided for in the ESEA, are tutoring and other academic activities that are in addition to any instruction provided during the regular school day, and that are designed to increase students' achievement on state academic assessments and their proficiency in meeting state academic achievement standards. The ESEA requires LEAs to offer supplemental educational services to low-income students who attend Title I-A schools that have not made adequate yearly progress (AYP) for three or more cumulative years, as part of a series of requirements in support of school improvement.⁴ Students receiving supplemental education services continue to remain eligible to receive Title I-A services otherwise provided through school-wide or targeted school programs.

Under the ESEA, students who attend Title I-A funded schools identified for school improvement after failing to make AYP for two consecutive years must be offered public school choice. This consists of the opportunity to select from among two or more schools from within the same LEA that have not been identified for school improvement, corrective action or restructuring;⁵ and that have not been designated as unsafe, (unless prohibited by state or local law or policy).⁶ The lowest achieving students from low-income families must receive priority in transferring to a different school. Schools identified for improvement also are required to implement school improvement plans and to be provided with technical assistance. LEAs must offer students attending schools identified for a second year of school improvement the opportunity to receive supplemental educational services, in addition to the continued opportunity to transfer to a different school under intradistrict public school choice.⁷ In instances where a school was in school improvement for two or more consecutive school years prior to the enactment of P.L. 107-110, students attending such a school became eligible to receive supplemental educational services beginning the first day of school year 2002-2003. In its regulations implementing the requirements of Title I-A, ED provides that in instances where LEAs are unable to offer public school choice to students attending schools

⁴ For a more thorough description of ESEA accountability and school improvement requirements, see CRS Report RL31487, *Education for the Disadvantaged: Overview of ESEA Title I-A Amendments Under the No Child Left Behind Act*, by Wayne Riddle.

⁵ A school would be identified for corrective action after failure to make AYP for four cumulative years; it would be identified for restructuring after failure to make AYP for five cumulative years.

⁶ 34 C.F.R. 200.44; and U.S. Department of Education, *Public School Choice: Nonregulatory Guidance*, Draft, Feb. 6, 2004, [<http://www.ed.gov/policy/elsec/guid/schoolchoiceguid.pdf>], visited Jan. 25, 2006.

⁷ It should be noted that in many large poor LEAs, there are often schools that are eligible for assistance under Title I-A, but that do not receive funding because other schools in the LEA have greater proportions of Title I-A eligible students. If such schools fail to make adequate yearly progress, poor students attending these schools would not be required to be offered supplemental educational services (or public school choice) because these schools are not subject to school improvement requirements under ESEA Section 1116.

that are in the first year of school improvement, LEAs *may* offer these students the opportunity to receive supplementary educational services.⁸

Parents whose children are eligible to receive supplemental educational services must be afforded the opportunity to choose a provider from a list of those approved by the SEA and that offer services in the local area. To facilitate parental choice in the selection of supplemental educational services providers, the ESEA delineates certain responsibilities for LEAs, SEAs, and providers.

Local Educational Agency Responsibilities

LEAs whose jurisdiction includes one or more schools receiving funding under ESEA Title I-A that have been identified for a second year of school improvement, or that have been identified for corrective action or restructuring under ESEA Title I-A, are required to make arrangements for the provision of supplemental educational services to children from low-income families who attend such schools. In doing so, at least once per year, such LEAs must notify parents of children who attend such schools of the availability of supplemental educational services for their children. In this notification to parents, LEAs must identify providers that offer supplemental educational services either within the LEA's jurisdiction or that of a neighboring and reasonably accessible LEA (including providers that offer services through distance learning). They must also provide a description of each provider, which must include the services it provides, the provider's qualifications, and its demonstrated effectiveness.⁹ If requested, LEAs must also provide parents with assistance in selecting a provider. If sufficient funds are not available to serve all eligible children, LEAs must give priority to the lowest achieving of eligible children. Finally, LEAs are prohibited from disclosing the identity of a student who is eligible or receiving supplemental educational services without the written permission of the student's parents.

Once the parents of an eligible student select an approved supplemental educational services provider, the LEA then must enter into an agreement with the provider covering the provision of services. Among the requirements of such agreements are that an LEA must consult with both a student's parents and the provider in the development of academic achievement goals for the student and how achievement of those goals will progress and be measured. If a student with a disability is to be served, the plan must be consistent with the student's individualized education program (IEP). The LEA is responsible for making payment to the provider for the costs of providing supplemental educational services.

⁸ 34 C.F.R. 200.44(h)(2). However, when LEAs voluntarily offer supplemental educational services, they are not bound by the requirements of ESEA § 1116(e) otherwise applicable to supplemental educational services.

⁹ An LEA may request from the SEA a full or partial waiver of the requirement to make supplemental educational services available if no providers approved by the SEA offer services either in the LEA's jurisdiction or within a reasonable distance, and if the LEA also shows that it is unable, itself, to provide supplemental educational services.

State Educational Agency Responsibilities

SEAs are responsible for working to ensure that parents have the opportunity to choose from among the greatest number of qualified supplemental educational services providers. Each year, SEAs are required to notify potential providers of the opportunity to become, and procedures for becoming, an approved provider of supplemental educational services. They also must evaluate potential providers' effectiveness in improving students' proficiency as measured according to state academic standards for required subjects (reading or language arts and mathematics, and, no later than the end of the 2005-2006 school year, science). In addition, SEAs are required to develop standards and techniques for monitoring the actual effectiveness of providers in increasing the academic proficiency of students who receive supplemental educational services provided under ESEA Title I-A. Finally, SEAs must establish and maintain lists of approved providers, delineated by LEA. They must remove from the list of approved providers any that fails for two consecutive years to contribute to the improved proficiency of the eligible students it serves. SEAs are also required to remove from their list of providers, schools and LEAs that have been identified for improvement, corrective action, or restructuring.¹⁰

Requirements of Providers

Providers of supplemental educational services may be public entities, such as LEAs or schools that have not been identified for improvement, institutions of higher education, and private non-profit or for-profit entities (including groups of individuals, such as teachers, organized as such). Religiously affiliated organizations are not prohibited from being supplemental educational services providers; however, the ESEA requires all instruction and content to be secular, neutral, and nonideological, and also prohibits the use of ESEA funds to pay for religious worship or instruction.¹¹ Providers must abide by all applicable federal, state, and local health, safety, and civil rights laws.

Federal civil rights laws generally apply to recipients of federal financial assistance; however, according to ED supplemental services providers are not considered recipients of federal financial assistance unless they otherwise receive federal financial assistance through other means. Despite this, in non-regulatory guidance ED states that because federal civil rights laws apply to SEAs and LEAs,

¹⁰ 34 C.F.R. 200.47(b)(1)(iv). The Secretary of Education has permitted exceptions to this rule as part of Supplemental Educational Services Pilot Programs, which are discussed later in this report.

¹¹ For additional information on how religiously affiliated organizations and private schools may become providers of supplemental educational services, see U.S. Department of Education, Center for Faith-Based and Community Initiatives, *Toolkit for Faith-Based and Community Organizations to Provide Extra Academic Help (Supplemental Educational Services)*, March 2003, at [<http://www.ed.gov/admins/comm/suppsvcs/toolkit.pdf>], visited July 13, 2006; and U.S. Department of Education, Office of Innovation and Improvement, *Questions and Answers on the Participation of Private Schools In Providing Supplemental Educational Services (SES)*, May 1, 2006, at [<http://www.ed.gov/policy/elsec/guid/onpe/sesguidance.doc>], visited July 13, 2006.

they “have the responsibility for ensuring that there is no discrimination in their supplemental educational services programs.”¹²

In order to maintain their listing by the SEA as approved providers, providers must agree to supply parents and LEAs with information about the academic progress of the children they serve in an easily understandable format. In addition, the academic content of their programs and method of instruction must be consistent with that of the LEA and the state, and also aligned with state academic achievement standards. Providers may not be required to hire only staff who meet the qualifications for teachers and paraprofessionals under ESEA Section 1119.¹³

Funding for Supplemental Educational Services

ESEA requirements for funding supplemental educational services are jointly applicable with the requirements for funding transportation for public school choice. If there is sufficient demand, LEAs must spend an *amount equal to* 20% of their Title I-A funding for public school choice-related transportation expenses and supplemental educational services.¹⁴ LEAs must spend a minimum of an amount equal to 5% of their Title I-A funding on each if there is sufficient demand. LEAs may divide the other 10% between the two purposes; however, if there is no demand for choice-related transportation, then the LEA must spend an amount equal to the full 20% on supplemental educational services.¹⁵ The ESEA does not require LEAs to provide students with transportation to the sites where SES providers offer services. However, if LEAs do provide transportation, they may not count transportation costs toward the 5% minimum expenditure requirement.

The ESEA limits LEAs’ cost per-pupil of providing supplemental educational services to the lesser of (a) the LEA’s Title I-A allocation per poor student (based on the number of children aged 5 to 17 from families below the poverty level), or (b) the actual cost of the supplemental educational services provided to a particular student.

¹² U.S. Department of Education, *Supplemental Educational Services: Non-Regulatory Guidance*, June 13, 2005, C-3, at [<http://www.ed.gov/policy/elsec/guid/suppsvcsguid.pdf>], visited Jan. 25, 2006. (Hereafter cited as ED, *Supplemental Educational Services Guidance*.)

¹³ 34 C.F.R. 200.47(b)(3); and ED, *Supplemental Educational Services Guidance*, C-21.

¹⁴ LEAs are not required to spend Title I-A funds for choice-related transportation or supplemental educational services. Rather LEAs may meet or exceed the applicable expenditure requirement with funds from other federal, state, local, or private sources. With regard to federal funds, LEAs may use Title V-A-3 (Local Innovative Education Programs) funds to pay for supplemental educational services. SEAs also may transfer funds to LEAs for supplemental education services under Title VI-A-2 (Funding Transferability for State and Local Educational Agencies). Funds may be transferred to LEAs from grants to states under the following programs: Title II-A (Teacher and Principal Training and Recruiting Fund); Title II-D (Enhancing Education Through Technology); Title IV-A (Safe and Drug-Free Schools and Communities); and Title V-A (Innovative Programs). SEAs also are authorized (but not required) to use administrative funds reserved under Title I-A or Title V-A to assist LEAs in meeting the costs of supplemental educational services.

¹⁵ ED, *Supplemental Educational Services Guidance*, K-3.

The ESEA does not stipulate whether the funds used to pay the cost of supplementary education services for students attending a particular school must come from the Title I-A allocation that would normally go to that school, or if the allocation to other schools in an LEA, or to central administration and services, may be reduced to cover these costs. However, LEAs are prohibited from reducing the total amount of Title I-A funds provided to any school identified for corrective action or restructuring by more than 15% to cover the costs of providing supplemental educational services (or for the cost of transporting students participating in public school choice, or any combination of the two).

The amount of per-pupil funding available for supplemental educational services will vary considerably from one LEA to another due to the variation across LEAs and states in the amount of Title I-A funding allocated under the four formulas (basic grants, concentration grants, targeted grants, and education finance incentive grants), and because SES funding per-pupil is determined by dividing Title I-A allocations by the number of students from families living below the poverty level.¹⁶ The nationwide distribution of the maximum allowable expenditures per pupil for supplemental educational services for school year 2006-2007 (FY2006) is presented in **Table 1**, by deciles of LEAs.

**Table 1. Distribution of Maximum Allowable Expenditures
Per Pupil for Supplemental Educational Services,
Mean within Deciles of LEAs: School Year 2006-2007**

Decile of LEAs (weighted by pupils below the poverty level)	Mean maximum expenditure (\$'s per-pupil)
10 th	\$2,090
9 th	\$1,738
8 th	\$1,497
7 th	\$1,380
6 th	\$1,305
5 th	\$1,243
4 th	\$1,185

¹⁶ Title I-A grants are calculated for each LEA based on the number of children aged 5 to 17 in families living below the poverty level; in families receiving temporary assistance for needy families (TANF) payments in excess of the poverty income threshold for a family of four; or living in institutions for neglected and delinquent children, or who are being supported in foster homes with public funds, whether or not they are from a family below the poverty line. Using the number of pupils from poor families, rather than the total number of Title I-A eligible pupils, to calculate the per-pupil cost limit for supplemental educational services results in a comparatively higher cost limit for select LEAs. One reason for this is that although the non-poverty children constitute only about 4% of the Title I-A formula eligible children nationally, this percentage is much higher in certain LEAs. More broadly, Title I-A grants per poor child vary due to differences in the state expenditure factor, degree of poverty concentration, hold-harmless effects, and other factors.

Decile of LEAs (weighted by pupils below the poverty level)	Mean maximum expenditure (\$'s per-pupil)
3 rd	\$1,118
2 nd	\$1,052
1 st	\$932

Source: CRS calculations.

Note: These figures take into account the reservation by states of 1% of funds for state administration and 4% for school improvement activities. Actual amounts available to LEAs may be further adjusted by states to account for LEA boundary changes, the consolidation or creation of new LEAs, and charter school LEAs.

Table 1 shows that there is considerable variation across LEAs in the level of funding that must be made available if the LEA is required to offer supplemental educational services to its students. For instance, the average LEA in the top decile of LEAs (ranked according to Title I-A allocations per poor pupil), may be required to provide up to \$2,200 for supplemental educational services, whereas the average LEA in the bottom decile of LEAs may be required to provide only up to \$981. This may result in different levels of supplemental educational services being available to students depending on the LEA in which they are enrolled.

ED has released tables of FY2005 Title I-A allocations to LEAs, which include estimates of the maximum per-child expenditure for supplemental educational services and the total amount of Title I-A funds that LEAs must reserve to fund supplemental educational services and transportation for public school choice, should they be required to provide these school improvement options.¹⁷ These tables further illustrate the differences in the maximum amount of funding required to be made available across LEAs.

When examining SES funding issues, is also important to recognize that since the maximum amount of per-pupil funding required to be provided by LEAs is determined by dividing Title I-A allocations by counts of children from poor families, SES per-pupil funding will vary with changes in child poverty counts and Title I-A funding levels. Nationwide, maximum LEA per-pupil expenditure amounts for supplemental educational services generally increased from FY2002 through FY2004, as child poverty counts decreased and Title I-A funding increased. However, in FY2005 and FY2006, the total number of children in poverty increased proportionately more so than did Title I-A funding, resulting in a slight decrease in maximum required per-pupil SES expenditure amounts.

¹⁷ U.S. Department of Education, Budget Service, *ESEA Title I LEA Allocations — FY2005*, at [<http://www.ed.gov/about/overview/budget/titlei/fy05/index.html>], visited Jan. 25, 2006. ED's Budget Service provides these data for informational purposes only.

Implementation of Supplemental Educational Services

School year 2006-2007 is the fifth year in which LEAs with schools identified for a second year of school improvement, corrective action, or restructuring have been required to offer students attending those schools the opportunity to receive supplemental educational services. Information increasingly is becoming available on how supplemental educational services are being implemented across the nation. This section identifies and describes various aspects of the implementation of supplemental educational services.

Identification and Availability of Providers

The ESEA requires SEAs to compile lists of eligible supplemental educational services providers and to make these lists available to the parents of eligible students. In 2002-2003, the first year of implementation, states struggled with identifying eligible SES providers. For example, by September 2002, only 5 states had published lists of approved providers. By September 2003, 19 states had published lists of approved SES providers; and by the 2003-2004, all but two states had done so.¹⁸ It also appears that most states have progressed with implementing supplemental educational services as required and are monitoring for results; although in a few states, implementation appears to be lagging.¹⁹

In some instances, approved SES providers only offer their services in selected regions or areas of a particular state. For example, small non-profit providers or consortia of teachers might offer services only in a particular LEA, county, or urban area. Often, providers may decline to offer services in areas where they are unlikely to be able to serve a critical mass of students. Some remote rural schools may be served only by providers offering services through distance learning. In some areas, LEAs are among the major providers of supplemental educational services. As previously mentioned, LEAs that become identified for improvement lose their eligibility to be SES providers. Still, certain entities that are affiliated with an LEA identified for improvement may remain eligible to be an SES provider. Examples of affiliated entities include 21st Century Community Learning Centers, community education programs, and parent information and resource centers.²⁰ State lists

¹⁸ U.S. Department of Education, Office of Planning, Evaluation and Policy Development, Policy and Program Studies Service, *Title I Accountability and School Improvement From 2001 to 2004*, April 2006, pp. 33-31, at [<http://www.ed.gov/rschstat/eval/disadv/tassie3/tassie3.pdf>], visited July 13, 2006. (Hereafter cited as ED, *Title I Accountability and School Improvement From 2001 to 2004*.)

¹⁹ Education Commission of the States, *No Child Left Behind (NCLB) Database*, at [<http://nclb2.ecs.org/NCLBSURVEY/nclb.aspx?target=SM&q=1258&questionName=Criteria%20for%20Supplemental%20Services>], visited Jan. 26, 2006.

²⁰ U.S. Department of Education, Office of Elementary and Secondary Education and Office of Innovation and Improvement, "Supplemental Educational Services (SES) Policy: District-affiliated Entities Becoming SES Providers," May 10, 2006, at [<http://www.ed.gov/policy/>]
(continued...)

typically identify the approved providers for each LEA that has a Title I-A school in which children are required to be offered services.²¹

In its evaluation of the implementation of ESEA Title I-A accountability requirements, ED found that in the 2003-2004 school year, the availability of supplemental educational services often did not match local needs. In particular, ED found that, although a total of 1,779 SES providers had been approved in 47 states and the District of Columbia, in many areas providers did not adequately serve rural populations, schools, and LEAs with few eligible students, or students with special needs, yet in other areas, SES providers could not meet the demand for their services.²²

Contracts for Supplemental Educational Services Delivery

To make supplemental educational services available to eligible students, LEAs and providers need to negotiate agreements or contracts for the provision of services for each student. Evidence has shown that contract negotiation can be a difficult and time consuming process, as separate contracts often must be negotiated with each provider in LEAs in which services must be offered. Items that often need to be negotiated include the specific services to be provided for a given cost (as within each state, different LEAs often have different maximum per-pupil expenditure amounts), whether providers will receive up-front payment for services to be provided, the terms of access to school facilities, how student transportation will be provided if services are delivered off school grounds, whether LEA instructional staff will be hired and trained by the provider to deliver services or if the provider will bring in its own staff, and whether a provider will require a minimum threshold of students before delivering services (e.g., will the provider deliver services if selected by only one student in a particular school or LEA?).²³

While the negotiation of contracts may appear to be a barrier in the implementation of supplemental educational services, the issues being negotiated often are not insignificant. For instance, providers and multiple LEAs may have to determine how appropriate services can be delivered when each LEA is authorized to pay different amounts for services, and providers often are seeking to work in multiple LEAs. This may lead to providers having to develop different service models for different LEAs. Some LEAs may have rules that prohibit the use of school space by for-profit entities, or may wish to charge providers rent for the use of school facilities. Others may have a reluctance to have multiple outside entities

²⁰ (...continued)

elsec/guid/stateletters/choice/ses051006.html], visited July 14, 2006.

²¹ Links to state SES websites are available from the U.S. Department of Education at [<http://www.ed.gov/about/inits/list/fbci/sescontacts.doc>], visited July 14, 2006.

²² ED, *Title I Accountability and School Improvement From 2001 to 2004*, pp. 33-35.

²³ For a discussion of some issues raised in the negotiation of contracts, see Michael Casserly, *No Child Left Behind: A Status Report on Choice and Supplemental Services in America's Great City Schools*, Council of Great City Schools, Jan. 2004. (Hereafter cited as Casserly, *No Child Left Behind*.)

operating within a school after normal school hours. In instances where providers do not have access to school facilities, they may want transportation costs to be included in their fee. (LEAs are permitted, but not required, to provide transportation to service providers.) It also may be difficult for providers enrolling students from multiple LEAs to ensure that their services are appropriately aligned with each LEA's curriculum. In addition, special agreements often must be drafted regarding the provision of services to students with special needs or who have limited English proficiency. Some SES providers have found it unprofitable to operate in a market in which they must work under different contracts with each LEA.²⁴ To address some of these concerns, ED has issued a policy letter clarifying the conditions that LEAs may and may not impose on providers in the negotiation of contracts.²⁵

Requests for Supplemental Educational Services

LEAs have been required to offer supplemental educational services to students attending schools identified for school improvement, corrective action, or restructuring for several years; data from the first two years of implementation show that the number of eligible students served has been limited. In the 2002-2003 school year, an estimated 1,100 LEAs were required to offer supplemental educational services to students enrolled in 1,300 schools identified for a second year of school improvement, corrective action, or restructuring. However, only 500 LEAs (48%) offered supplemental educational services, making them available in 800 schools (58%). ED estimates that a total of 791,000 students from low-income families were eligible to receive supplemental educational services in 2002-2003 but that because not all LEAs offered SES, services were only available to 592,000 students. The number of students who received supplemental educational services is much smaller — 41,000, or 7% of students to whom services were offered.²⁶

In the 2003-2004 school year, the second year of implementation, ED estimates that 1,100 LEAs were required to offer supplemental educational services to more than 1.3 million students enrolled in 3,100 schools. However, only 600 LEAs (53%) offered supplemental educational services in 2,500 schools (83%). Supplemental educational services were received by 258,000 students, or 19% of those eligible to receive them.²⁷

There are a number of reasons why eligible students might not be receiving services. As previously discussed, the initial process of identifying providers and negotiating contracts has been slow in some instances. Also, there have been delays in the identification of schools where children are required to be offered services, and

²⁴ Sarah Sparks, "SES Providers View Districts' Disparity as Impediment," *Education Daily*, Dec. 1, 2005, pp. 1-2.

²⁵ U.S. Department of Education, Letter to Chief State School Officers, *Supplemental Educational Services Policy: LEA Conditions on Providers*, Aug. 26, 2005, at [<http://www.ed.gov/policy/elsec/guid/stateletters/choice/ses082604.html>], visited Jan. 26, 2006.

²⁶ ED, *Title I Accountability and School Improvement From 2001 to 2004*, p. 28.

²⁷ *Ibid.*, p. 28.

in notifying parents of the availability of services. In many instances, parents have not been notified of the availability of services until after the beginning of the school year.²⁸ Also, in some instances, notices announcing the availability of services may not have been easy for parents to understand, or may not have been received by parents.

Supplemental Educational Services Pilot Programs

In 2005, the Secretary of Education first announced that flexibility in the provision of supplemental educational services would be granted in limited circumstances through SES Pilot Programs.²⁹ Two types of SES Pilot Programs have been approved. The first addresses concerns of some large urban LEAs that have been providers of supplemental educational services but that became ineligible upon being identified for improvement. Under the SES Pilot Programs, ED has granted flexibility to the Boston, Chicago, and New York City LEAs — each of which has been identified for improvement — to allow them to continue to remain eligible as SES providers.³⁰ In return for this flexibility, these LEAs must provide early notification to parents about SES eligibility, extend enrollment periods, provide non-LEA SES providers with access to facilities for a reasonable fee, and participate in an independent third-party evaluation to determine the effectiveness of supplemental educational services.

The second type of SES Pilot Program responds to concerns about the sequencing of public school choice and supplemental educational services as sanctions for schools identified for improvement. Some believe that it may make sense to offer supplemental educational services prior to being required to offer public school choice. (Preliminary data on the implementation of ESEA Title I-A accountability provisions may support this contention, as in school year 2003-2004, only 1% of 2.75 million students eligible for public school choice participated, whereas 19% of 1.3 million students to whom supplemental educational services were made available participated.)³¹ Under the SES Pilot Program, ED has approved a reversal in the sequencing of SES and school choice as sanctions in four LEAs in Virginia — Alexandria City, Henry County, Newport News, and Stafford County. In return for this flexibility, Virginia must enhance its SES and public school choice programs, extend SES enrollment periods, provide outreach to parents, and provide

²⁸ Casserly, *No Child Left Behind*, p. 28. Late notification may have had less of an impact on student receipt of supplemental educational services than on public school choice (in which there is an even lower take-up rate), as it is considerably more disruptive to change schools after the start of the school year than to start a tutoring program outside of regular school hours.

²⁹ U.S. Department of Education, *Supplemental Educational Services Pilot Programs*, at [<http://www.ed.gov/nclb/choice/help/ses/pilot.pdf>], visited Jan. 26, 2006.

³⁰ U.S. Department of Education, NCLB Policy Letters to States, *Supplemental Educational Services Flexibility Agreements*, at [<http://www.ed.gov/policy/elsec/guid/stateletters/index.html#ses>], visited Jan. 26, 2006.

³¹ ED, *Title I Accountability and School Improvement From 2001 to 2004*, pp. 16, 28.

ED with data on the academic achievement of students receiving supplemental educational services.³²

In May 2006, the Secretary announced an extension of the SES Pilot Program to permit LEAs to reverse the order in which they offer public school choice and supplemental educational services.³³ States that (a) have made timely AYP notifications for both the 2004-2005 and 2005-2006 school years, (b) currently have supplemental educational services evaluations in progress, and (c) have assessment systems rated by ED in one of the top three categories were invited to apply for flexibility in reversing the order of public school choice and supplemental educational services on behalf of seven LEAs, of which at least two should be rural LEAs.

Accountability of Providers

It appears that in practice, states, LEAs, and providers are still in the beginning stages of implementing the accountability requirements applicable to supplemental educational services.³⁴ Providers are required to provide information on the academic progress of the students they serve to individual student's parents and to LEAs. SEAs also are required to assess the performance of providers as they maintain their lists of eligible providers. However, at present, little information is available on the performance of providers and on the effectiveness of supplemental educational services in improving student academic achievement. The agreements by LEAs participating in SES Pilot Programs to provide increased access to data on the academic achievement of SES recipients may aid efforts to evaluate the effectiveness of SES providers.

³² U.S. Department of Education, NCLB Policy Letters to States, *Supplemental Educational Services Flexibility Agreements*, at [<http://www.ed.gov/policy/elsec/guid/stateletters/index.html#ses>], visited Jan. 26, 2006.

³³ U.S. Department of Education, Office of the Secretary, Key Policy Letters Signed by the Education Secretary or Deputy Secretary, "SES Pilot Program: Offering SES to Students in Schools in Year One of Improvement," May 15, 2006, at [<http://www.ed.gov/policy/elsec/guid/secletter/060515.html>], visited July 14, 2006.

³⁴ Gail L. Sunderman and Jimmy Kim, *Increasing Bureaucracy or Increasing Opportunities? School District Experience with Supplemental Educational Services*, The Civil Rights Project, Harvard University, Feb. 2004, p. 31, at [http://www.civilrightsproject.harvard.edu/research/esea/increasing_bureaucracy.pdf], visited Jan. 26, 2006.